

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

RONNIE J. KONIKOFF, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 1999-224  
 )  
 PRINCESS CRUISES, INC., LISTON )  
 BRADSHAW d/b/a LISTON RELIABLE TAXI )  
 SERVICE, and THE WEST INDIAN )  
 COMPANY, LTD., )  
 )  
 Defendants. )

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**ATTORNEYS:**

**Lee J. Rohn, Esq.**  
St. Croix, U.S.V.I.  
*For the plaintiff,*

**Carol G. Hurst, Esq.**  
St. Thomas, U.S.V.I.  
*For the defendants.*

**MEMORANDUM**

Moore, J.

Before the Court is the motion for summary judgment filed by defendant Princess Cruises, Inc. ["Princess" or "defendant"]. For the reasons set forth below, the Court will grant the motion.

**Factual and Procedural Background**

On or about December 26, 1997, Ronnie Konikoff ["Konikoff" or "plaintiff"], was a passenger on the Princess cruise ship *Dawn Princess* for a vacation voyage. While the *Dawn Princess* was

docked in St. Thomas, Konikoff utilized a taxi van owned and operated by Liston Bradshaw d/b/a Liston's Reliable Taxi Service ["Liston"]. As she exited the van, Konikoff fell and sustained serious and permanent injuries. The plaintiff filed this action for damages on December 14, 1999, naming as defendants Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc., Liston Bradshaw, and the Virgin Islands Port Authority.<sup>1</sup>

The plaintiff proceeds against Princess on the theory that she is the intended third-party beneficiary of a contract or agreement between Princess and Liston (through the Virgin Islands Taxi Association), as well as one between Princess and WICO, to provide tour and taxi services to Princess passengers. So far the Court has seen no evidence of such contracts, but assuming they do exist, their terms would have placed Princess under a duty to provide such services in a reasonably safe manner to this particular plaintiff. Because Princess failed to provide a safe taxi as it had agreed, the theory goes, it breached its agreements and is liable to the plaintiff for damages resulting from the breach.<sup>2</sup>

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<sup>1</sup> Defendant West Indian Company Ltd. was added later, and both the Peninsular and Oriental Steam Navigation Company and the Virgin Islands Port Authority have been dismissed from this action.

<sup>2</sup> "A promise in a contract creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty." RESTATEMENT (SECOND) OF CONTRACTS § 304.

Princess moves for summary judgment on the grounds that the plaintiff's claim against it is time-barred by the limitations contained in the ticket contract. In the alternative, Princess Cruises asks the Court to dismiss or transfer the case to the venue named in the forum-selection clause found in the ticket contract.

**Discussion**

The Court agrees with Princess that the plaintiff's claim is time-barred by valid provisions of the ticket contract.

Paragraph 17 of the ticket contract states, in relevant part:

In cases involving claims for emotional or bodily injury, illness to or death of any Passenger, no lawsuit may be brought against Carrier unless . . . a lawsuit on such claim is filed within 1 year from the date of the . . . injury . . . . In all other cases, no lawsuit may be brought against Carrier unless . . . the lawsuit on such claim is filed within 6 months from the date the Cruise terminated . . . .

See Def. Princess's Mem. Supp. Summ. J. Ex. A (Passage Contract), ¶ 17. The plaintiff makes no claim that the ticket contract is not clearly-worded or was inconspicuous, circumstance that might render it unenforceable. See *Sharpe v. West Indian Co.*, 118 F. Supp. 2d 646, 649 (2000). Instead, she argues that the ticket contract does not control the alleged on-shore injury on the theory that she was not a "passenger" covered by the paragraph 17 of passage contract at the time of the injury. See Pl.'s Opp. at 2-3.

The plaintiff's argument fails. First, "passenger" is defined as "the person(s) purchasing or accepting this Passage Contract or anyone who uses it." See Def. Princess's Mem. Ex. A, ¶ 1. The plaintiff does not dispute that she purchased or used the passage contract, thus she is a "passenger" subject to the terms of the passage contract. Second, the same argument was made and lost just last year in *Sharpe v. West Indian Company, Ltd*, 118 F. Supp. 2d at 650-51. In *Sharpe*, this Court held, after extensive discussion and in nearly identical circumstances, that a passenger was covered by her cruise ticket contract – and thus subject to its terms – even when she was on shore at one of the cruise destinations: "Clearly she did not become a party to the contract only when she boarded the vessel and cease to be a party covered by the contract each time she disembarked at the various ports of call on the vessel's regular itinerary." *Id.* at 650.

As a party covered at all relevant times by the passage contract, the plaintiff is bound by its terms, one of which being that she must file her claim within the valid limitations period. The plaintiff's argument that her claim does not in fact "arise" from the passage contract but instead arises out of the alleged third-party contract does not render the passage contract inapplicable to her claim for that other contract's breach, a

claim brought necessarily in her capacity as a passenger. According to her theory, Konikoff is the intended beneficiary of a contract "to provide land transportation services to passengers of [Princess's] vessel Dawn Princess." See Pl.'s Mem. Opp. at 2 (emphasis added). Obviously, she couldn't be an intended beneficiary of this alleged third-party contract, whose express intent would be to benefit passengers, without also being a passenger subject to the passage contract. The plaintiff's reasoning, which somehow makes her a passenger for purposes of the alleged third-party contract but not a passenger for purposes of the passage contract, is nothing short of mystifying.

Although the plaintiff acknowledges the Court's holding in *Sharpe*, she simply states without any supporting argument that the Court should reconsider its decision there. See *id.* at 5. Finding no reason to revisit the question, the Court follows *Sharpe* to conclude that the plaintiff did not comply with the limitations provision of the passage contract. Accordingly, the plaintiff's claim is time-barred. The Court will grant Princess's motion for summary judgment. The motion to dismiss or transfer for improperly venue will be denied as moot, as well as the plaintiff's motion filed pursuant to Fed. R. Civ. P. 56(f).

An appropriate order follows.

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**ENTERED this 13th day of August, 2001.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

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*For the plaintiff,*

**Carol G. Hurst, Esq.**  
St. Thomas, U.S.V.I.  
*For the defendants.*

**ORDER**

For the reasons stated in the accompanying Memorandum of even date, it is hereby

**ORDERED** that Princess Cruises, Inc.'s motion for summary judgment is **GRANTED**. Princess Cruises, Inc. is **DISMISSED** as a defendant in this action.

**ENTERED** this 13th day of August, 2001.

**FOR THE COURT:**

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\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
**Deputy Clerk**

**Copies to:**

Honorable Geoffrey W. Barnard  
Lee J. Rohn, Esq.  
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Carol G. Hurst, Esq.  
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Jennifer Coffin, Esq.